In the High Court of Judicature for Rajasthan
At
Jaipur Bench, Jaipur

O R D E R

In

S.B. Criminal Misc. Petition No.990/2007
M/s Indian Oil Corporation Limited and others
Vs.
Mahendra Gaur and another

Date Of Order :: 30.7.2007

Hon'ble Mr. Justice Jitendra Ray Goyal

Mr. K.T.S. Tulsi, Senior Counsel with
Mr. Sudhanshu Kasliwal, for petitioners
Mr. Mahendra Gaur, non-petitioner, present in person.
Mr. R.P. Kuldeep, Public Prosecutor for State.

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By the Court:-

By way of this criminal misc. petition under section 482 of the Code of Criminal Procedure the petitioners seek to challenge the impugned order dated 29/5/2007 passed by Special Court, Judicial Magistrate (Economic Offences), Jaipur in Criminal Case No.21/2006 whereby the application preferred by the accused petitioners therein raising their objections qua the territorial jurisdiction of the court and seeking exemption from appearance was dismissed.

2. For appreciating the controversy the relevant brief facts are that respondent-complainant Mahendra Gaur was employee of the M/s. Indian Oil Corporation Limited (in short corporation) and way back in the year 2000, was dismissed from the service, filed a criminal complaint before the Special Court, Judicial Magistrate (Economic Offences), Jaipur on 6/3/2006 against corporation and its eighteen directors including nominee directors for non-payment of dividends under sections 206 & 207 of the Companies Act and criminal breach of trust. Learned Special Court, Economic Offences, Jaipur took cognizance on 17/1/2007 for the offence under section 207 of the Companies Act. Against that order of cognizance the accused petitioners preferred a criminal misc. petition no.521/2007 under section 482 of the Code of Criminal Procedure before this Court and also submitted an application before the trial court under sections 177, 179 & 205 of the Code of Criminal Procedure challenging its jurisdiction and seeking exemption from personal attendance, which was dismissed, therefore aggrieved from that order this criminal misc. petition was filed.

3. Heard learned counsel for the accused petitioners, respondent-complainant Mahendra Gaur present in person, learned Public Prosecutor for the State and perused the material placed on the record.

4. Learned Senior Counsel Shri K.T.S. Tulsi appearing on behalf of the accused petitioners first of all submitted that since the order of cognizance dated 17/1/2007 passed by the trial court against the accused petitioners has separately been challenged before this Court in S.B. Criminal Misc. Petition No.521/2007 on various grounds, therefore only submissions were advanced in regard to exemption of the accused petitioners from their personal attendance and it was submitted that just to wreak private vengeance as the corporation had dismissed the services of the complainant, all the senior officials including chairman, directors and ex-directors of corporation were arrayed as accused by the complainant deliberately suppressing this fact that after adjustment of the interest part of the loan amount, taken by the complainant for the purchase of shares, from the dividends, remaining amount of dividend of Rs.5760/- along with 1200

share certificates have been released. It was further submitted that accused petitioners are the senior officials of the prestigious corporation residing and working at Mumbai and Delhi, therefore their personal presence is also not required for the progress of the criminal proceedings, rather insistence of their personal presence would itself inflict enormous and suffering tribulation on them and work of corporation would also suffer in their absence. In support of the contentions, reliance was placed on **Bhaskar Industries Ltd. Vs. Bhiwani Denims & Apparels Ltd**., reported in **(2001)7S.C.C.401**.

5. Respondent-complainant Shri Mahendra Gaur while supporting the impugned order contended that the accused petitioners deliberately withheld his dividends and after due satisfaction cognizance has been taken against them in a criminal case by the competent court, therefore they cannot claim exemption from their personal appearance from the court only on the ground that they are the senior officials of the corporation. Reliance was placed on **Special Leave Petition (Cri.) 3978 of 1999** titled as **U.P. Pollution Control Board Vs. M/s. Mohan Meakins**

Ltd. & others decided on **27/3/2000** in which cognizance against the employees of M/s. Mohan Meakins Ltd. was taken under the pollution Act on the complaint made by the Pollution Board and the charges were levelled about spreading pollution in river 'Gomati', the Hon'ble Supreme Court granted a liberty to exempt personal attendance of the accused after making their first appearance. Reliance was also placed on **V.K. Jain Vs. Union of India and others**, reported in **(2000)1 Supreme Court Cases 709** wherein also under the facts and circumstances of that matter the accused was granted liberty to move application for exemption from his personal attendance after making his first appearance. Reference was also made on **Ashok Chaturvedi Vs. State of U.P. and another**, **Petition(s) for Special Leave to Appeal (Crl) No(s). 3416/2007**, but this judgment does not have any bearing on the present controversy since in that case permission was granted by the Apex Court to withdraw the petition for special leave to appeal with liberty to seek other appropriate remedies.

6. I have given my anxious consideration on the rival submissions made at the bar. Since the question of

determination revolves round the scope and power of the Magistrate to dispense with accused's personal attendance under section 205 of the Code of Criminal Procedure, therefore it is desirable to refer the same which reads as under :-

> “205. Magistrate may dispense with personal attendance of accused :-
> (1) Whenever Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.
> (2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and if necessary, enforce such attendance in the manner hereinbefore provided.”

7. A plain reading of section 205 of the Code of Criminal Procedure clearly indicates that the Magistrate while issuing summons has discretion to dispense with the personal attendance of the accused and permit him to appear by a pleader. The use of expression 'if he sees reason so to do' clearly indicates that power conferred by section 205(1) of the Code of Criminal Procedure is discretionary and no hard and fast rule can be laid down as to the manner in which it is to be exercised. The question when such discretion has to be exercised is to be

considered after giving due consideration in attendant circumstances. It is correct to say that this cannot be a sole ground for exemption from personal attendance of petitioners that they are the senior officials of some reputed company or corporation but discretion needs to be exercised keeping in view the nature of offence and aberration alleged, prima facie material for acceptance of such allegation, possibility of malafide allegation, prejudice if any likely to be caused if personal attendance is not made. Court further has to weigh the inconvenience likely to be caused to accused if he is required to be absent from his vacation, profession, trade, occupation and calling for attendance in court. Hon'ble Apex Court in **Bhaskar Industries Ltd.'s case (supra)** observed that the normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the court. The concern of the criminal court should primarily be the administration of criminal justice. For that purpose the proceedings of the

court in the case should register progress. Presence of the accused in the court is not for marking his attendance just for the sake of seeing him in the court. It is to enable the court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the court in that particular case. It was further observed that in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel. In **K. Narayan Patra Vs. Gopinath Sahu**, reported in **1991 CRI.L.J. 3219** it was observed that whenever personal attendance is insisted upon, there is undubitably some harassment to the accused; and the Courts have to see that this harassment is not out of proportion to the seriousness of the allegation, the severity of possible punishment on conviction, nature of allegations as they stand out prima facie. The Court should normally dispense with personal appearance when it concerns with a pardanashin woman, high placed public functionary, a busy captain of an

industry, and persons rendering public service.

8. In the instant case, as indicated above, the accused petitioners have been arrayed as accused on the premise of non-payment of dividend to the complainant. It is not disputed that Sh. Sarthak Behuria is Chairman and others are the directors and ex-directors of corporation and they are working and residing at different places like Mumbai and Delhi. The trial court did not indicate any convincing reason for refusing the prayer of the petitioners for exemption from their personal attendance and representation by lawyer in the case. It is also not indicated in the impugned order that attendance of the accused petitioners could not be procured in course of trial when necessity arises. Considering the nature of the offence and all other attending circumstances including the fact that personal attendance of the accused petitioners does not appear to be necessary for the progress of the case and most of the accused petitioners are public functionaries and insistence of personal presence may not only harass them but also disturb the work of corporation, I am of the opinion that discretion should be exercised in favour of the petitioners permitting them to appear through their counsel.

9. In the result, this criminal misc. petition is

allowed and the impugned order dated 29/5/2007 passed by the learned Special Court, Judicial Magistrate (Economic Offences), Jaipur is set aside to the extent of refusal for exemption of personal attendance of the accused petitioners. Personal attendance of the accused petitioners is dispensed with. They are permitted to appear through their counsel till conclusion of the trial. It is further made clear that if their personal attendance is required during the trial, the court may, by resorting the provisions of sub-section (2) of section 205 of the Code of Criminal Procedure, enforce their attendance.

10. With the above observations, this criminal misc. petition is disposed of.

(J.R. Goyal),J.

VS Shekhawat/-
Jr. P.A.